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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Plaintiff,

9 -vs-

10 DAVID C. SMITH,

11 Defendant.
12

NO. CR-02-0022-WFN

ORDER

13 Before the Court for hearing without oral argument is Mr. Smith's Motion for Early
14 Termination [of Supervised Release] filed by defense counsel Amy Rubin on January 24,
15 2007 (Ct. Rec. 117). Assistant United States Attorney Thomas Hopkins filed a Response on
16 January 31, 2007 (Ct. Rec. 120) opposing the Motion for Early Termination. United States
17 Probation Officer Richard Law also provided the Court and counsel with a Response to
18 Request for Early Termination, dated January 26, 2007, in which he too opposed early
19 termination. Mr. Smith's Reply was filed February 7, 2007 (Ct. Rec. 121).

20 Mr. Smith asserts that he has completed over 34 months of his 36 month term of
21 supervised release; that he has been compliant with the terms of his supervision, and that on
22 January 10, 2007 he paid off the remaining balance of his \$3,000 fine. He is attempting to
23 obtain his mortgage broker license but cannot submit his application until he is off
24 supervision.

25 The Government and the Probation Officer objected to early termination of supervision
26 noting that Defendant was initially not compliant with instructions to make payments on the

1 \$3,000 fine and did not pay it off until the Probation Officer advised that he would seek an
2 extension of the term of supervised release. Although Mr. Smith was providing child care for
3 his children as a “stay-at-home-Dad” he also did not seek even part-time employment when
4 encouraged to do so by the Probation Officer. The expiration date for supervision is March
5 7, 2007.

6 **Applicable Law.** 18 U.S.C. § 3583(e) provides that:

7 The court may, after considering the factors set forth in § 3553(a)(1), (a)(2)(B),
8 (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

9 (1) terminate a term of supervised release and discharge the defendant
10 released at any time after the expiration of one year of supervised release,
11 pursuant to the provisions of the Federal Rules of Criminal Procedure
relating to the modification of probation, if it is satisfied that such
action is warranted by the conduct of the defendant released and the interests
of justice

12 The factors to be considered include 18 U.S.C. § 3553(a)(1) (nature and circumstances
13 of offense and history and characteristics of the defendant); (a)(2)(B) (adequate deterrence);
14 (a)(2)(C) (protection of the public); (a)(2)(D) (services needed by the defendant); (a)(4)
15 (established sentence); (a)(5) (U.S.S.G. policy statements); (a)(6) (need to avoid sentencing
16 disparity); and (a)(7) (need to provide restitution to any victims).

17 **Findings.** The Court finds that:

18 1. Mr. Smith was initially not compliant with the requirement to make
19 payments towards his \$3,000 fine. A supervised release violation hearing was held
20 October 20, 2005, to address this non-compliance. The Court made no finding on the
21 alleged violation but encouraged Mr. Smith to comply with the requirements of
22 \$125.00 per month payment toward the fine.

23 2. While Mr. Smith is commended for finally paying off the \$3,000 fine, the
24 Court notes that if payments of \$125.00 per month had been made, the fine would have
25 been paid off in 24 months rather than in the 34 months required by Mr. Smith.

26 3. Mr. Smith’s term of supervised release will expire on March 7, 2007.

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE